

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JESUS M. SILVA,**

**Petitioner,**

**v.**

**CASE NO. 2:11-CV-671**

**JUDGE GEORGE C. SMITH**

**MAGISTRATE JUDGE E.A. PRESTON DEAVERS**

**ROBIN KNAB, WARDEN,**

**Respondent.**

**OPINION AND ORDER**

On April 24, 2012, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed as barred by the one-year statute of limitations under 28 U.S.C. § 2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

Petitioner argues that his motion for leave to file a second appeal tolled the running of the statute of limitations, because he argued that his sentence was void, and his appeal therefore should have been addressed by the state appellate court under Ohio law. Petitioner complains that the Magistrate Judge merely "rubber stamped" the decision of the Ohio Court of Appeals. *Objections*, at 4.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's objections, Doc. 15, are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** as time-barred.

**IT IS SO ORDERED.**

*/s/ George C. Smith*  
**GEORGE C. SMITH, JUDGE**  
**UNITED STATES DISTRICT COURT**